

SAN BERNARDINO COMMUNITY COLLEGE DISTRICT

Audit Report

HEALTH FEE ELIMINATION PROGRAM

Chapter 1, Statutes of 1984, 2nd Extraordinary Session,
and Chapter 1118, Statutes of 1987

July 1, 2001, through June 30, 2003



STEVE WESTLY
California State Controller

November 2004



STEVE WESTLY
California State Controller

November 10, 2004

Donald F. Averill, Ed.D., Chancellor
San Bernardino Community College District
114 South Del Rosa Drive
San Bernardino, CA 92408

Dear Dr. Averill:

The State Controller's Office audited the claims filed by the San Bernardino Community College District for costs of the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2001, through June 30, 2003.

The district claimed \$1,130,569 for the mandated program. Our audit disclosed that \$520,246 is allowable and \$610,323 is unallowable. The unallowable costs occurred because the district claimed ineligible costs, overstated indirect costs, and understated revenue offsets. The State paid the district \$92,835. The State will pay allowable costs claimed that exceed the amount paid, totaling \$427,411, contingent upon available appropriations.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (COSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at COSM's Web site at www.csm.ca.gov (Guidebook link), and obtain IRC forms by telephone at (916) 323-3562 or by e-mail at csminfo@csm.ca.gov.

If you have any questions, please contact Jim L. Spano, Chief, Compliance Audits Bureau, at (916) 323-5849.

Sincerely,

Original Signed By:

VINCENT P. BROWN
Chief Operating Officer

VPB:JVB/jj

cc: (See page 2)

cc: Robert Temple, Vice Chancellor
Fiscal Services
San Bernardino Community College District
Ed Monroe, Program Assistant
Fiscal Accountability Section
Chancellor's Office
California Community Colleges
Jeannie Oropeza, Program Budget Manager
Education Systems Unit
Department of Finance
Charles Pillsbury, School Apportionment Specialist
Department of Finance

Contents

Audit Report

Summary	1
Background	1
Objective, Scope, and Methodology	2
Conclusion	2
Views of Responsible Official	3
Restricted Use	3
Schedule 1—Summary of Program Costs	4
Findings and Recommendations	6
Attachment—District’s Response to Draft Audit Report	

Audit Report

Summary

The State Controller's Office (SCO) audited the claims filed by the San Bernardino Community College District for costs of the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session (E.S.), and Chapter 1118, Statutes of 1987) for the period of July 1, 2001, through June 30, 2003. The last day of fieldwork was August 16, 2004.

The district claimed \$1,130,569 for the mandated program. The audit disclosed that \$520,246 is allowable and \$610,323 is unallowable. The unallowable costs occurred because the district claimed ineligible costs, overstated indirect costs, and understated revenue offsets. The State paid the district \$92,835. The State will pay allowable costs claimed that exceed the amount paid, totaling \$427,411, contingent upon available appropriations.

Background

Education Code Section 72246 (repealed by Chapter 1, Statutes of 1984, 2nd E.S.) authorizes community college districts to charge a health fee for providing health supervision and services, direct and indirect medical and hospitalization services, and operation of student health centers. This statute also required that health services for which a community college district charged a fee during fiscal year (FY) 1983-84 had to be maintained at that level in FY 1984-85 and every year thereafter. The provisions of this statute would automatically sunset on December 31, 1987, reinstating the community college districts' authority to charge a health fee as specified.

Education Code Section 72246 (amended by Chapter 1118, Statutes of 1987) requires any community college district that provided health services in FY 1986-97 to maintain health services at the level provided during that year in FY 1987-88 and each fiscal year thereafter.

On November 20, 1986, the Commission on State Mandates (COSM) determined that Chapter 1, Statutes of 1984, 2nd E.S., imposed a "new program" upon community college districts, by requiring any community college district that provided health services for which it was authorized to charge a fee pursuant to former *Education Code* Section 72246 in FY 1983-84 to maintain health services at the level provided during that year in FY 1984-85 and each fiscal year thereafter. This maintenance-of-effort requirement applies to all community college districts that levied a health services fee in FY 1983-84, regardless of the extent to which the health services fees collected offset the actual costs of providing health services at the FY 1983-84 level.

On April 27, 1989, COSM determined that Chapter 1118, Statutes of 1987, amended this maintenance-of-effort requirement to apply to all community college districts that provided health services in FY 1986-87, and required them to maintain that level in FY 1987-88 and each fiscal year thereafter.

Parameters and Guidelines establishes the state mandate and defines reimbursement criteria. COSM adopted *Parameters and Guidelines* on August 27, 1987, and last amended it on May 25, 1989. In compliance with *Government Code* Section 17558, the SCO issues claiming instructions for mandated programs, to assist local agencies and school districts in claiming reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Health Fee Elimination Program for the period of July 1, 2001, through June 30, 2003.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, not funded by another source, and not unreasonable and/or excessive.

We conducted the audit according to *Government Auditing Standards*, issued by the Comptroller General of the United States, and under the authority of *Government Code* Section 17558.5. We did not audit the district's financial statements. Our audit scope was limited to planning and performing audit procedures necessary to obtain reasonable assurance concerning the allowability of expenditures claimed for reimbursement. Accordingly, we examined transactions, on a test basis, to determine whether the costs claimed were supported.

We limited our review of the district's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, the San Bernardino Community College District claimed \$1,130,569 for Health Fee Elimination Program costs. Our audit disclosed that \$520,246 is allowable and \$610,323 is unallowable.

For FY 2001-02, the State paid the district \$92,835. Our audit disclosed that \$210,676 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$117,841, contingent upon available appropriations.

For FY 2002-03, the district received no payment. Our audit disclosed that \$309,570 is allowable. The State will pay allowable costs claimed, totaling \$309,570, contingent upon available appropriations.

**Views of
Responsible
Official**

We issued a draft audit report on September 30, 2004. Robert Temple, Vice Chancellor, responded by letter dated October 13, 2004, disagreeing with the audit results. The final audit report includes the district's response (Attachment).

Restricted Use

This report is solely for the information and use of the San Bernardino Community College District, the California Community Colleges Chancellor's Office, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original Signed By:

JEFFREY V. BROWNFIELD
Chief, Division of Audits

Schedule 1— Summary of Program Costs July 1, 2001, through June 30, 2003

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustments</u>	<u>Reference ¹</u>
<u>July 1, 2001, through June 30, 2002</u>				
Health services costs:				
Salaries	\$ 367,585	\$ 326,196	\$ (41,389)	Finding 1
Benefits	54,560	54,560	—	
Services and supplies	123,819	86,471	(37,348)	Finding 2
Indirect costs	210,961	88,166	(122,795)	Finding 3
Total health services costs	756,925	555,393	(201,532)	
Less cost of services in excess of FY 1986-87 services	(2,564)	(2,564)	—	
Subtotals	754,361	552,829	(201,532)	
Less authorized health fees	(231,122)	(328,764)	(97,642)	Finding 4
Subtotals	523,239	224,065	(299,174)	
Less offsetting savings/reimbursements	(13,389)	(13,389)	—	
Total program costs	<u>\$ 509,850</u>	210,676	<u>\$(299,174)</u>	
Less amount paid by the State		(92,835)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 117,841</u>		
<u>July 1, 2002, through June 30, 2003</u>				
Health services costs:				
Salaries	\$ 402,669	\$ 340,930	\$ (61,739)	Finding 1
Benefits	59,734	59,734	—	
Services and supplies	159,834	121,512	(38,322)	Finding 2
Indirect costs	249,766	91,067	(158,699)	Finding 3
Total health services costs	872,003	613,243	(258,760)	
Less cost of services in excess of FY 1986-87 services	—	—	—	
Subtotals	872,003	613,243	(258,760)	
Less authorized health fees	(234,810)	(287,199)	(52,389)	Finding 4
Subtotals	637,193	326,044	(311,149)	
Less offsetting savings/reimbursements	(16,474)	(16,474)	—	
Total program costs	<u>\$ 620,719</u>	309,570	<u>\$(311,149)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 309,570</u>		

Schedule 1 (continued)

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustments</u>	<u>Reference</u> ¹
<u>Summary: July 1, 2001, through June 30, 2003</u>				
Health services costs:				
Salaries	\$ 770,254	\$ 667,126	\$(103,128)	Finding 1
Benefits	114,294	114,294	—	
Services and supplies	283,653	207,983	(75,670)	Finding 2
Indirect costs	<u>460,727</u>	<u>179,233</u>	<u>(281,494)</u>	Finding 3
Total health services costs	1,628,928	1,168,636	(460,292)	
Less cost of services in excess of FY 1986-87 services	<u>(2,564)</u>	<u>(2,564)</u>	<u>—</u>	
Subtotals	1,626,364	1,166,072	(460,292)	
Less authorized health fees	<u>(465,932)</u>	<u>(615,963)</u>	<u>(150,031)</u>	Finding 4
Subtotals	1,160,432	550,109	(610,323)	
Less offsetting savings/reimbursements	<u>(29,863)</u>	<u>(29,863)</u>	<u>—</u>	
Total program costs	<u>\$1,130,569</u>	520,246	<u>\$(610,323)</u>	
Less amount paid by the State		<u>(92,835)</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 427,411</u>		

¹ See the Findings and Recommendations section.

Findings and Recommendations

FINDING 1— Overstated health services

The district overstated health services costs by \$103,128 for the audit period.

The costs are unallowable because the services were not provided in FY 1986-87. These costs include flu shots, hepatitis shots, pap smears, and outside laboratory services for San Bernardino Valley College, and flu shots, hepatitis shots, outside laboratory services, and marriage therapy for Crafton Hills College.

A summary of the adjustment is as follows:

	Fiscal Year		Total
	2001-02	2002-03	
San Bernardino Valley College	\$ (20,673)	\$ (29,847)	\$ (50,520)
Crafton Hills College	(20,716)	(31,892)	(52,608)
Audit adjustment	<u>\$ (41,389)</u>	<u>\$ (61,739)</u>	<u>\$(103,128)</u>

Parameters and Guidelines specifies that community college districts shall only be reimbursed the costs of health services provided to the extent they were provided by the district in FY 1986-87.

Recommendation

We recommend that the district ensure it only claims costs of health services that were provided by the district in FY 1986-87.

District's Response

The State Controller alleges overstated audit period costs for certain health services which were “not provided” in Fiscal Year 1986-87. The State Controller states that “*Parameters and Guidelines* specifies that community college districts shall only be reimbursed the costs of the health services provided to the extent they were provided by the district in FY 1986-87.”

The parameters and guidelines also state at Part III Eligible Claimants:

“Community college districts which provided health services in 1986-87 fiscal year and continue to provide the same services as a result of the mandate are eligible to claim reimbursement of those costs.”

Education Code section 76355, subdivision (e), states:

“Any community college district that provided health services in the 1986-87 fiscal year shall maintain health services, at the level provided during the 1986-87 fiscal year, and each fiscal year thereafter.”

The State Controller, as the audit agency proposing the adjustment, has the burden of proving the factual and legal basis for its adjustments. The State Controller audit findings do not demonstrate if the enumerated services allegedly “not provided” in Fiscal Year 1986-87 were indeed actually available. It would therefore appear that this finding is based upon the wrong standard for review.

In addition, the State Controller’s calculation of the cost of services “not provided” utilizes extrapolation of facts not reasonably related to the actual cost of those services.

SCO’s Comment

The finding and recommendation remain unchanged.

In addition to the criteria mentioned above, our position is supported by Parts V and VIII of the *Parameters and Guidelines*. Part V(A)–Scope of Mandate states, “Eligible community college districts shall be reimbursed for the costs of providing a health services program. Only services provided in FY 1986-87 may be claimed.” Part VIII–Supporting Data states:

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. This would include documentation for FY 1986-87 program to substantiate a maintenance of effort. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on request of the State Controller or his agent.

Throughout the audit fieldwork and up until October 22, 2004 (the date of this response), the district did not provide us with any documentation to substantiate its assertion that the health services in question were provided at the San Bernardino Valley College and/or Crafton Hills College in FY 1986-87.

Furthermore, in an attempt to determine if the health services in question were reported in prior-year mandated cost claims, we asked district personnel to provide the earliest mandated cost claims available. We were given a copy of the FY 1997-98 Health Fee Elimination cost claim. From our review of this claim, we observed that the health services in question were not listed. If the district staff believes information in prior year claims is inaccurate, it has the responsibility to corroborate its position.

**FINDING 2—
Overstated services
and supplies**

The district overstated service and supply costs by \$75,670 because it claimed ineligible athletic insurance costs of \$72,554 and did not support costs of \$3,116.

A summary of the adjustment is as follows:

	Fiscal Year		Total
	2001-02	2002-03	
Athletic insurance costs	\$ (37,348)	\$ (35,206)	\$ (72,554)
Unsupported costs	—	(3,116)	(3,116)
Audit adjustment	<u>\$ (37,348)</u>	<u>\$ (38,322)</u>	<u>\$ (75,670)</u>

Parameters and Guidelines states that community college districts shall be reimbursed only for costs of health services programs that are traceable to supporting documentation showing evidence of the validity of such costs. Also, *Education Code* Section 76355(d) (formerly Section 72246(2)) states that authorized expenditures for health services shall not include the cost of athletic insurance.

Recommendation

We recommend that the district ensure all claimed costs are eligible and supported.

District's Response

The District is still investigating the athletic insurance costs to determine if the amounts reported in the claim related to basic insurance costs for students who also were covered by athletic insurance. However, the final audit report need not be delayed for this work.

SCO's Comment

The finding and recommendation remain unchanged.

The district did not provide any additional information supporting this finding.

**FINDING 3—
Overstated indirect
cost rate claimed**

The district overstated indirect costs by \$281,494 for the audit period.

The district claimed indirect costs based on an indirect cost rate proposal (ICRP) prepared for each fiscal year by an outside consultant. However, the district did not obtain federal approval for its rate. We calculated indirect cost rates using the methodology allowed by the SCO's claiming instructions. The calculated indirect cost rates did not support the indirect cost rates claimed.

A summary of the claimed and audited indirect cost rates is as follows:

	Fiscal Year	
	2001-02	2002-03
Allowable indirect cost rate based on total direct costs	18.87%	17.44%
Claimed indirect cost rate based on total direct costs	38.64%	40.14%

We recalculated indirect costs as follows:

	Fiscal Year		Total
	2001-02	2002-03	
Allowable direct costs claimed	\$ 467,227	\$ 522,176	
Allowable indirect cost rate	× 18.87%	× 17.44%	
Allowable indirect costs	88,166	91,067	
Less claimed indirect costs	(210,961)	(249,766)	
Audit adjustment	<u>\$ (122,795)</u>	<u>\$ (158,699)</u>	<u>\$(281,494)</u>

Parameters and Guidelines states that indirect costs may be claimed in the manner described in the SCO's claiming instructions.

The SCO's claiming instructions state that community colleges have the option of using a federally approved rate prepared in accordance with OMB Circular A-21 or the alternate methodology using State Controller's Form FAM-29C, which is based on total expenditures as reported in California Community Colleges Annual Financial and Budget Report, Expenditures by Activity (CCFS-311).

Recommendation

We recommend that the district ensure indirect costs claimed are computed using a federally approved rate prepared in accordance with OMB Circular A-21, or the SCO's alternate methodology using Form FAM-29C.

District's Response

The State Controller asserts that the District must obtain federal approval for its indirect cost rate or use a method prescribed by the State Controller. The parameters and guidelines for Health Fee Elimination (as last amended on May 25, 1989) state that "Indirect costs *may be claimed* in the manner described by the State Controller in his claiming instructions." The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the State Controller.

The State Controller's claiming instructions for Form HFE-1.1, line (05), state that for claiming indirect costs, college districts have the option of using a federally approved rate from the Office of Management and Budget Circular A-21, from FAM 29C, or a 7% indirect cost rate. The State Controller claiming instructions were never adopted as rules or regulations, and therefore have no force of law. The burden is on the State Controller to show that the indirect cost rate used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section

17651(d)(2). If the State Controller wishes to enforce the audit standards for mandated cost reimbursement, the State Controller should comply with the Administrative Procedures Act.

SCO's Comment

The finding and recommendation remain unchanged.

Parameters and Guidelines states that indirect costs may be claimed in the manner described in the SCO's claiming instructions. Therefore, the specific directions for the indirect cost rate calculation in the claiming instructions are an extension of the *Parameters and Guidelines*. The SCO's claiming instructions state that community colleges have the option of using a federally approved rate prepared in accordance with OMB Circular A-21 or the SCO's alternate methodology using Form FAM-29C. In this case, the district chose to use indirect cost rates not approved by a federal agency, which is not an option provided by the SCO's claiming instructions.

FINDING 4— Understated authorized health fee revenues claimed

The district understated authorized health fee revenue by \$150,031 for the audit period.

The district reduced claimed costs by actual rather than authorized health fee revenues. Therefore, we recalculated authorized health fee revenues by multiplying student enrollment by term net of allowable health fee exemption by the authorized student health fee. Student enrollment information was obtained from the term unit report, and the student waiver information was obtained from the Board of Governors Grant (BOGG) report.

A summary of our adjustment to authorized health fee revenues is as follows:

	<u>Summer</u>	<u>Fall</u>	<u>Spring</u>	<u>Total</u>
<u>FY 2000-01</u>				
Student enrollment	9,485	16,519	17,640	
Allowable health fee exemptions	<u>(3,309)</u>	<u>(5,636)</u>	<u>(5,758)</u>	
Subtotals	6,176	10,883	11,882	
Authorized student health fee	<u>× \$ 9</u>	<u>× \$ 12</u>	<u>× \$ 12</u>	
Audited authorized health fee revenues	<u>\$ 55,584</u>	<u>\$130,596</u>	<u>\$142,584</u>	\$ 328,764
Claimed authorized health fee revenues				<u>(231,122)</u>
Audit adjustment, FY 2000-01				<u>97,642</u>
<u>FY 2001-02</u>				
Student enrollment	3,406	18,176	16,773	
Allowable health fee exemptions	<u>(1,595)</u>	<u>(6,102)</u>	<u>(6,272)</u>	
Subtotal	1,811	12,074	10,501	
Authorized student health fee	<u>× \$ 9</u>	<u>× \$ 12</u>	<u>× \$ 12</u>	
Audited authorized health fee revenues	<u>\$ 16,299</u>	<u>\$144,888</u>	<u>\$126,012</u>	287,199
Claimed authorized health fee revenues				<u>(234,810)</u>
Audit adjustment, FY 2001-02				<u>52,389</u>
Total audit adjustment				<u>\$ 150,031</u>

Parameters and Guidelines states that health fees authorized by the *Education Code* must be deducted from costs claimed. *Education Code* Section 76355(c) states that health fees are authorized from all students except those who: (1) depend exclusively on prayer for healing; (2) are attending a community college under an approved apprenticeship training program; or (3) demonstrate financial need.

Also, *Government Code* Section 17514 states that costs mandated by the State means any increased costs which a district is required to incur. To the extent community college districts can charge a fee, they are not required to incur a cost. In addition, *Government Code* Section 17556 states that COSM shall not find costs mandated by the State if the district has the authority to levy fees to pay for the mandated program or increased level of services.

Recommendation

We recommend that the district should ensure that allowable health services program costs are offset by the amount of health service fee revenues authorized by *Education Code*.

District's Response

The State Controller alleges that claimants must compute the total student health fees collectible and reduce claimed costs by this amount even if those fees are not collected in full or part.

Education Code Section 76355, subdivision (a), states that "The governing board of a district maintaining a community college may require community college students to pay a fee . . . for health supervision and services . . ." There is no requirement that community colleges levy these fees. The permissive nature of the provision is further illustrated in subdivision (b) which states "If, pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional." (Emphasis supplied in both instances)

The State Controller asserts that the parameters and guidelines require "that health fees authorized by the Education Code must be deducted from the costs claimed." This is a misstatement of the Parameters and Guidelines. The Parameters and Guidelines, as last amended on May 25, 1989, state that "Any offsetting savings . . . must be deducted from the costs claimed . . . This shall include the amount of (student fees) as authorized by Education Code Section 72246(a)¹." Therefore, while student fees actually collected are properly used to offset costs, student fees that could have been collected, but were not, are not an offset.

¹ Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, Section 29, and was replaced by Education Code Section 76355.

The State Controller also misconstrues the legal meaning of Government Code Section 17556 which prohibits the Commission on State Mandates from approving test claims when the local government agency has authority to charge a fee sufficient to fund the cost of the mandate. The Commission determined that the mandate was a new program or increased level of service. Even the source of the mandate, Education Code Section 76355, at subdivision (e), allows for the possibility that the “cost to maintain that level of service” will exceed the statutory limit for the student health fees.

Notwithstanding the State Controller’s argument for its adjustment, State Controller audit staff stated that they would be providing to the District additional information in support of their health fee calculation before the draft audit report was issued and would allow the District time to respond. This information was not provided to the District and the draft audit report has been issued.

SCO’s Comment

The fiscal effect of the finding and recommendation remain unchanged. The language in the draft report relating to the unavailability of the student attendance data has been deleted based on information provided by the district.

We agree that community college districts may choose not to levy a health services fee. This is true even if *Education Code* Section 76355 provides the districts with the authority to levy such fees. However, the effect of not imposing the health services fee is that the related health services costs do not meet the requirement for mandated costs as defined by *Government Code* Section 17514. In simple terms, health services costs recoverable through an authorized fee are not costs that the district is required to incur. Moreover, *Government Code* Section 17556 states that COSM shall not find costs mandated by the State as defined in *Government Code* Section 17514 if the district has authority to levy fees to pay for the mandated program or increased level of service.

**Attachment—
District's Response to
Draft Audit Report**



114 South Del Rosa Drive • San Bernardino, CA 92408 • Phone (909) 382-4000

Donald F. Averill, Ed.D., Chancellor

October 13, 2004

Mr. Jim L. Spano, Chief
Compliance Audits Bureau
California State Controller
Division of Audits
P.O. Box 942850
Sacramento, CA 94250-5874

Re: Chapter 1, Statutes of 1984
Health Fee Elimination
State Controller's Audit
Fiscal Years: 2001-02 and 2002-03

Dear Mr. Spano:

This letter is the response of the San Bernardino Community College District to the letter from Vincent P. Brown, Chief Operating Officer, State Controller's Office, dated September 30, 2004, and received by the District on October 6, 2004, which enclosed a draft copy of your audit report of the District's Health Fee Elimination claims for the period of July 1, 2001 through June 30, 2003.

Finding 1 - Overstated Health Services

The State Controller alleges overstated audit period costs for certain health services which were "not provided" in Fiscal Year 1986-87. The State Controller states that "*Parameters and Guidelines* specifies that community college districts shall only be reimbursed the costs of the health services provided to the extent they were provided by the district in FY 1986-87."

The parameters and guidelines also state at Part III Eligible Claimants:

"Community college districts which provided health services in 1986-87 fiscal year and continue to provide the same services as a result of the mandate are eligible to claim reimbursement of those costs."

Education Code section 76355, subdivision (e), states:

"Any community college district that provided health services in the 1986-87 fiscal year shall maintain health services, at the level provided during the 1986-87 fiscal year, and each fiscal year thereafter."

The State Controller, as the audit agency proposing the adjustment, has the burden of proving the factual and legal basis for its adjustments. The State Controller audit findings do not demonstrate if the enumerated services allegedly "not provided" in Fiscal Year 1986-87 were indeed actually available. It would therefore appear that this finding is based upon the wrong standard for review.

In addition, the State Controller's calculation of the cost of services "not provided" utilizes extrapolation of facts not reasonably related to the actual cost of those services.

Finding 2 - Overstated Services and Supplies

The District is still investigating the athletic insurance costs to determine if the amounts reported in the claim related to basic insurance costs for students who also were covered by athletic insurance. However, the final audit report need not be delayed for this work.

Finding 3 - Overstated Indirect Cost Rates Claimed

The State Controller asserts that the District must obtain federal approval for its indirect cost rate or use a method prescribed by the State Controller. The parameters and guidelines for Health Fee Elimination (as last amended on May 25, 1989) state that "Indirect costs *may be claimed* in the manner described by the State Controller in his claiming instructions." The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the State Controller.

The State Controller's claiming instructions for Form HFE-1.1, line (05), state that for claiming indirect costs, college districts have the option of using a federally approved rate from the Office of Management and Budget Circular A-21, from FAM-29C, or a 7% indirect cost rate. The State Controller claiming instructions were never adopted as rules or regulations, and therefore have no force of law. The burden is on the State Controller to show that the indirect cost rate used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d)(2)). If the State Controller wishes to enforce audit standards for mandated cost reimbursement, the State Controller should comply with the Administrative Procedures Act.

Finding 4 - Understated Authorized Health Fee Revenues Claimed

The State Controller alleges that claimants must compute the total student health fees

collectible and reduce claimed costs by this amount even if those fees are not collected in full or part.

Education Code Section 76355, subdivision (a), states that "The governing board of a district maintaining a community college may require community college students to pay a fee . . . for health supervision and services" There is no requirement that community colleges levy these fees. The permissive nature of the provision is further illustrated in subdivision (b) which states "if, pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional." (Emphasis supplied in both instances)

The State Controller asserts that the parameters and guidelines require "that health fees authorized by the Education Code must be deducted from the costs claimed." This is a misstatement of the Parameters and Guidelines. The Parameters and Guidelines, as last amended on May 25, 1989, state that "Any offsetting savings . . . must be deducted from the costs claimed . . . This shall include the amount of (student fees) as authorized by Education Code Section 72246(a)¹." Therefore, while student fees actually collected are properly used to offset costs, student fees that could have been collected, but were not, are not an offset.

The State Controller also misconstrues the legal meaning of Government Code Section 17556 which prohibits the Commission on State Mandates from approving test claims when the local government agency has authority to charge a fee sufficient to fund the cost of the mandate. The Commission determined that the mandate was a new program or increased level of service. Even the source of the mandate, Education Code Section 76355, at subdivision (e), allows for the possibility that the "cost to maintain that level of service" will exceed the statutory limit for the student health fees.

Notwithstanding the State Controller's argument for its adjustment, State Controller audit staff stated that they would be providing to the District additional information in support of their health fee calculation before the draft audit report was issued and would allow the District time to respond. This information was not provided to the District and

¹ Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, Section 29, and was replaced by Education Code Section 76355.

Jim Spano, Chief

4

October 13, 2004

the draft audit report has been issued.

O

O

O

The District requests that the audit report be changed to comply with the law.

Sincerely,



Robert Temple, Vice Chancellor
Fiscal Services
San Bernardino Community College District

C: Keith Petersen, President, SixTen and Associates

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, California 94250-5874**

<http://www.sco.ca.gov>